Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 922 of 2001
(Old No. 534 of 1996)

Bhim Dutt
S/o Shri Munshi Ram
R/o Village Silwal
Patti Oan, District Tehri ….Appellant/Defendant

Versus

Smt. Vimla Devi
W/o Shri Bhim Dutt
R/o Hal Mayat Suki Patti
Oan, District Tehri
Post Officer Thapla …Respondent/Plaintiff

Mr. B.P.S. Mer, learned counsel for the appellant.
Mr. H.M. Raturi, learned counsel for the respondent.

Coram: Hon'ble Rajeev Gupta, C.J,
Hon'ble Prafulla C. Pant, J.

Hon'ble Prafulla C. Pant, J. (Oral)

This appeal, preferred under Section 28 of Hindu Marriage Act, 1955, is directed against the judgment and decree dated 16.10.1996, in Original Suit No. 41 of 1995, passed by learned District Judge, Tehri Garhwal, whereby the petition of the respondent was allowed for permanent alimony, directing the appellant to pay Rs. 1,000/- per month as maintenance to her.

2. Brief facts of the case are that the appellant got married to the respondent according to Hindu rites in the month o f November, 1978. It appears that the respondent|

filed a divorce petition in the year 1989, against her husband (appellant), which was decreed ex-parte and the marriage between the parties was dissolved. Thereafter, in the year 1995, the respondent filed a petition under section 25 of Hindu Marriage Act, 1955, for permanent alimony, claiming Rs. 5,000/- per month as maintenance from the appellant (divorced husband), which was registered as Original Suit No. 41 of 1995. It was alleged in the petition that income of the appellant is Rs. 20,000/- per month and the respondent (divorced wife) has no means to maintain herself. Shri Bhim Datt (appellant/divorced husband), contested the petition for permanent alimony and filed his written statement before the learned District Judge. (There is no family court established in Tehri Garhwal). In the written statement, it is alleged by the appellant that his monthly income in only Rs. 1,000/- per month. It was further alleged by him that the respondent (petitioner before trial court) was earning Rs. 2,000/- per month as salary from working as Sahyogini in Mahila Samakhya. The learned trial court framed following issues in the suit:-

1. *Whether the petitioner is entitled to permanent alimony? If so, what should be the adequate allowance to be paid to the petitioner by the respondent?*
2. *Whether the petitioner has sufficient means to maintain herself? If so, whether the petitioner is not entitled to claim any maintenance allowance?*
3. *To what relief, if any, is the petitioner entitled?*

3. After recording the evidence and hearing the parties, the learned trial court came to the conclusion that the

appellant is the owner of taxies and has sufficient means to pay the maintenance while the respondent (petitioner before the trial court) has no sufficient means to maintain herself as such, allowed the petition under Section 25 of the Hindu Marriage Act, 1955, for permanent alimony, directing that the appellant shall pay to the respondent Rs. 1,000/- per month as maintenance. Aggrieved by said judgment and order, this appeal has been preferred.

4. We heard learned counsel for the parties and perused the record.

5. Admittedly, the appellant got married to the respondent in the year 1978 and marriage between them has already been dissolved. It is also not disputed that the present respondent did not get remarried after dissolution of the marriage. The dispute relates as to the fact whether the appellant has sufficient means to pay the maintenance and whether the present respondent is unable to maintain herself or not? From the evidence on recorded, it is clear that though in the written statement, the appellant has alleged that he is a taxi driver but in his statement as D.W. 1, he has admitted that he owns taxi. He has admitted that he earns Rs. 6,000/- per month through his business. As far as income of divorced wife is concerned, though it is alleged by the appellant as against the present respondent that she was earning Rs. 2,000/- per month by doing work as Sahyogini with Mahila Samakhya and is also doing work of sewing, knitting and training other ladies in that field, but neither the work of Sahyogini in Mahila Samakhya nor sewing or knitting can be said to be a permanent source of

income. The present respondent cannot be expected to starve for the want of maintenance as such, sewing, knitting or working as Sahyogini in Mahila Smakhaya, cannot be said to be her regular source of income. It has come on the record that for attending meetings as Sahyogini in Mahila Samakhya, the respondent used to get Rs. 200/- per meeting. It is not clear that for how long the respondent may continue as Sahyogini. In the circumstances, we are in full agreement with the findings of the learned lower court that the petitioner (present respondent) was entitled to maintenance at the rate of Rs. 1,000/- per month from the divorced husband who was found to have been earning Rs. 6,000/- per month.

6. Learned counsel for the appellant argued that the amount of Rs. 1,000/- should be reduced to Rs. 500/- per month, as he was so allowed vide interim order in the appeal at the time of admission of the appeal. Allahabad High Court has stayed impugned order on condition that the appellant continues to pay maintenance to the respondent @ Rs. 500/- per month.

7. We are unable to accept the submission for the reason that respondent cannot be expected to live without dignity with the meager amount. However, in the interest of justice we think it just and proper to allow the petitioner to pay the arrears of unpaid alimony in four quarterly installments from the date this order is passed Accordingly, for the reasons as discussed above, we do not find any merit in this appeal, which is liable to be dismissed. The same is dismissed. The interim order

dated 20.01.1998, is vacated. However, the appellant is allowed to pay arrears of unpaid amount of alimony in four quarterly instilments from today. No order as to costs in this appeal.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt: 26th of April, 2006
Sweta